IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

DAVID JACKSON, #23040104 §

VS. § CIVIL ACTION NO. 6:18cv323

JIMMY BURKETT, ET AL. §

ORDER OF DISMISSAL

Plaintiff David Jackson, an inmate confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation (Dkt. #13) concluding that Plaintiff's civil action should be dismissed for failure to state a claim. Plaintiff has filed an "order to replead," (Dkt. #15), docketed as a motion to replead. The court construes Plaintiff's motion as objecting to the Report and Recommendations.

In his motion, Plaintiff states that he is not suing Investigator Jose Gomez and attaches a letter from the Texas Department of Public Safety acknowledging the inappropriateness of Investigator Jimmy Burkett's behavior. Although the Texas Department of Public Safety sustained the allegations against Investigator Burkett, his conduct is insufficient to raise to the level of a constitutional violation in this context, as noted by the Magistrate Judge.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Plaintiff, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without

merit. The court, therefore, adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is therefore

ORDERED that Plaintiff's complaint is **DISMISSED** with prejudice. All motions not previously ruled on are **DENIED**.

SIGNED this the 16 day of October, 2018.

Thad Heartfield

United States District Judge